Supreme Court of the United States

OCTOBER TERM, 1962

No. 735

UNITED STATES, APPELLANT

vs.

RALPH L. SAMPSON, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

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[fol. 1]

IN UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

No. 22385

UNITED STATES OF AMERICA

vs.

RALPH L. SAMPSON, LEONARD MILLER, HERBERT RUTTENBERG, MARTIN RYE, U. T. THOMPSON, CHARLES McCARTHY, JOHN STEELE, WALTER A. ARATA, PAUL C. BROOKS, DAVID B. GRAY, GEORGE K. GREER, ED GUETTEL, WESLEY M. ISBELL, CHRIS E. JENSEN, DAVID A. LANDERS, RAY L. PREWITT, BERT ROLAND, FRANK SIERSMA, BURR F. SPRAGUE, WILLIAM M. WALLEN, WARD WILLIAMS, E. L. WILSON, E. S. WOHRLE, LENDERS SERVICE CORPORATION

INDICTMENT—Filed in Open Court April 29, 1960

THE GRAND JURY CHARGES:

COUNT ONE

That, beginning prior to March 9, 1956, and continuing until June 1, 1959, the defendants

RALPH L. SAMPSON
LEONARD MILLER
HERBERT RUTTENBERG
MARTIN RYE
U. T. THOMPSON
CHARLES McCARTHY
[fol. 2] JOHN STEELE
WALTER A. ARATA
PAUL C. BROOKS
DAVID B. GRAY
GEORGE K. GREER
ED GUETTEL
WESLEY M. ISBELL

CHRIS E. JENSEN
DAVID A. LANDERS
RAY L. PREWITT
BERT ROLAND
FRANK SIERSMA
BURR F. SPRAGUE
WILLIAM M. WALLEN
WARD WILLIAMS
E. L. WILSON
E. S. WOHRLE
LENDERS SERVICE, CORPORATION,

a corporation devised and intended to devise a scheme and artifice to defraud Chester J. French, Roger E. Barefield, Clarence R. Smith, O. K. Livingston, Joe W. Collins, Mrs. Doris Severns, Mrs. Bernice Gadow, George M. Moody, A. N. Modrall, Joe Helms, Ray D. Humphrey, W. E. Jeffords, Sr., E. J. Murphy, W. L. Albritton, J. A. Pullen, W. H. Carithers, R. M. Garris, Pearl Q. Brewer, Alvin L. Klotz, N. A. Coffey, Walter M. Harmon, Jr., L. W. Addy, Mattie S. Bailey, Leroy Smith, H. L. Hayworth, Mrs. Jeanette Curtis, Joseph E. Saliba, R. O. Stephenson, A. W. Tarpley, James W. Boyette, Jr., John L. Stanley, Jr., John P. Jackson, Carroll L. Fulmer, W. C. Bradbury, William Tate, Milton V. Herstis, Mildred J. Gafford, J. E. Claggett, C. E. English, Mason L. Hollcroft, John Baldwin, R. A. Baures, [fol. 3] W. H. Drewell, J. J. Robinson, Arthur Springer, William H. Sanders and numerous and divers other persons throughout the United States, who were owners or operators or connected with the operation of businesses who were desirous of selling their businesses or of obtaining business loans, and who could be induced to reply to advertising disseminated by the defendants, in the names of Charles Ford & Associates, Inc., Business Mart of America, Inc. and Lenders Service Corporation, and to obtain money and property from said persons hereinafter called "victims" by numerous false and fraudulent pretenses, representations and promises, well knowing that said pretenses, representations and promisses would be and were false when made.

1. That, at all times during and throughout the period of operation of the said scheme, the defendants Ralph Sampson, Herbert Ruttenberg and Leonard Miller were the organizers, main executives and directors of said scheme.

2. That, at all times throughout the operation of said scheme the defendant Martin Rye was a participant therein and was at times engaged as a salesman and at times was in charge of the Atlanta office, and at times held the title of Administrative Director in Lenders Service Corporation.

3. That, during the operation of said scheme, the defendant Charles McCarthy acted as a regional director of the Atlanta, Georgia, office of the defendants, and for a time as an instructor for the sales department of said sheme.

4. That, during the operation of said scheme, the defendant John Steele acted as a regional director of the [fol. 4] Atlanta, Georgia, office of the defendants, and in the same capacity in other offices of the defendants.

5. That, during the operation of said scheme, the defendant U. T. Thompson held the official title of executive Vice President of Lenders Service Corporation.

6. That, during the operation of said scheme, the defendants Walter A. Arata, Paul C. Brooks, David B. Gray, George K. Greer, Ed Guettel, Wesley M. Isbell, Chris E. Jensen, David A. Landers, Ray L. Prewitt, Bert Roland, Frank Siersma, Burr F. Sprague, William M. Wallen, Ward Williams, E. L. Wilson and E. S. Wohrle acted as salesmen for the said scheme and artifice, and operated from the Atlanta, Georgia, regional office of the defendants.

7. That, the defendant Lenders Service Corporation acted from the time of its incorporation on December 18, 1957, as one of the corporate entities in the name of which said scheme was carried on.

And the Grand Jurors further charge:

A. It was a part of said scheme and artifice to defraud that the defendants would and did form a series of corporations in whose names the scheme would be and was carried on, said corporations being known as Charles Ford

& Associates, Inc., Business Mart of America, Inc., hereinafter also referred to as BMA, and Lenders Service Corporation, hereinafter also referred to as LSC. It was a part of said scheme and artifice to defraud that the defendants would and did, while operating under and using the names of Charles Ford & Associates, Inc. and BMA, seek as victims businessmen desiring to sell their businesses, and to make to such victims numerous false [fol. 5] and fraudulent pretenses, representations and promises relating to the ability and intention of the defendants to sell or help to sell said victims' businesses. It was a part of said scheme and artifice to defraud that the defendants would and did, while operating under and using the name of LSC, seek as victims businessmen desiring to obtain business loans, and to make to such victims numerous false and fraudulent pretenses, representations and promises relating to the ability and intention of the defendants to make, secure, or help to secure business loans for said victims.

B. It was a part of said scheme and artifice to defraud that the defendants would and did distribute, send and display through newspapers, magazines, direct mailings and direct display by the salesmen numerous advertisements and promotional documents, all of which contained numerous false and fraudulent statements, pretenses and representations which the defendants then and there well knew and intended to be false and fraudulent when made.

C. It was a further part of the said scheme and artifice to defraud that the defendants would secure salesmen by the placing of newspaper advertisements seeking ex-book salesmen and other persons without experience in the money-lending field to work for the defendants and to become a part of the said scheme and to seek to attract salesmen who would be agreeable to the use of unethical sales talks and hire and use them as field representatives, and it was a further part of the scheme to teach such salesmen that prospective victims were at a complete disadvantage and would jump and act like puppets if the salesman handled the client right, and to teach them to try and impress upon the victims that said salesman was [fol. 6] an expert; to teach salesmen to try and confuse

victims and to lead them into believing that LSC was a lending company; to teach said salesmen to accept loan applications or applications for LSC's purported services even though they know there is little or no chance for a loan to be made; and to teach said salesmen that LSC and the defendants did not care how such salesmen sold a contract to a victim and that it was perfectly all right for a salesman to use innuendos and half-truths and, further, for said salesmen to be taught that if a victim asks a question as to the return of his fee if the loan is not made to reply: "Why did you bring that up? Is there something you didn't tell me? What worries you about this business? What have you been hiding?", rather than to answer the question truthfully; and it was a further part of the scheme to encourage and teach the field representatives to answer questions by asking other questions and to fail to answer questions put to them by victims, and to be evasive in answering questions of the said victims and to encourage them to pretend to the victims that they were loan officers; and to represent and encourage the field representatives to represent LSC as being the Mayo Clinic for businessmen; to represent that, if it were at all possible for a businessman to obtain a loan, LSC could arrange for such a loan; pretend to be surprised when it was brought to attention of LSC that a victim had not received his loan; lead victim to believe a closs association and working arrangement existed between LSC and commercial finance companies by referring to various finance companies as "our lenders"; convince a victim that the loan could be made in less time if the client's check was certified.

D. It was a further part of said scheme and artifice to [fol. 7] defraud that upon receipt of a reply from a business establishment or owner responding to the inquiry of the defendants, one of the defendant salesmen would visit personally the owner of the business and others for the purpose of inducing them to enter into contracts with the defendants and with the defendant corporations, said contracts purportedly relating to the sale of their business establishments or building, as to the victims contacted under the names of Charles Ford & Associates, Inc. and

Business Mart of America, Inc., and said contracts purportedly relating to the obtaining of a loan for said business man in connection with his business as to the victims contacted under the name of LSC and to induce said owner and victim to agree to pay and to pay a fee to the defendants in advance of any action or promised action being taken thereof by the defendants, and it was a further part of the said scheme to defraud that in the action of the said salesmen in seeking to so induce the victims and in presenting the purported advantages of such action on their part to the victims that the said salesmen would and did act toward and talk to the said victims in the manner in which they had been instructed as alleged in Paragraph C hereof, and that said salesmen would and did make numerous false and fraudulent statements, pretenses and promises and representations which they and the other defendants knew to be false and fraudulent.

E. It was a further part of the said scheme and artifice to defraud that the said salesmen when contacting business-owner victims under the names of Charles Ford & Associates, Inc. and Business Mart of America, Inc. would inquire the price which the owners desired to obtain for the business and when told the price would induce the [fol. 8] owner to name a substantially higher price and would state and describe the services to be rendered by Charles Ford & Associates, Inc. and by Business Mart of America, Inc. to accomplish sales of the business; and that the salesmen when contacting victims under the name of LSC would inquire as to the amount of loan which the victim business-owner desired to obtain and, when told the amount of the loan, would on numerous occasions induce the owner to seek a substantially higher loan; and it was a further part of the said scheme and artifice to defraud that the salesmen through false and fraudulent representations would induce the victim to sign a document purporting to be an application for the services of Business Mart of America, Charles Ford & Associates, Inc. or Lenders Service Corporation, said documents being called financial service agreements, although, as well known to the salesmen and to the defend-

ants and to all of them, the terms of said document were contrary to the oral representations made by the salesmen to the victims; it was a further part of this phase of the said scheme and artifice to defraud that the salesmen would induce the victims to pay to the salesmen an advance fee for the purported services which they led the victim to believe were to be performed by the defendants and that after a salesman had obtained the check and left the place of business of the victim he would immediatiately take the same to the bank upon which drawn to have the same converted into a Cashier's Check, and that the salesmen would have with them a rubber stamp provided by the regional managers and other defendants, which rubber stamp was used on the back of the victim's check and designated that the check was approved to be certified; and it was a further part of said scheme and [fol. 9] artifice to defraud that the defendants would not perform the services orally represented by the salesmen and otherwise represented by the defendants through their advertising and literature to said victims in that they would not sell the businesses of the victims, they would not procure buyers for the business of said victims, and would not bring such buyers into contact with the victims, nor do any action which was intended to be helpful in obtaining buyers for the businesses of the victims, and that they would not and did not obtain loans for the victims nor make loans for the victims nor try to obtain nor make loans for the victims nor do any action which was intended to be helpful in obtaining loans for the victims.

F. It was a further part of said scheme and artifice to defraud:

1. That the defendants would represent to each victim that he would get a refund of his advance fee if his application for services were not accepted at one of the regional offices of the defendants, and that if the same were accepted and the fee kept by the defendants, the defendants had approved said application and would perform the valuable services which they had falsely and fraudulently represented to said victim that they would perform. That when said applications for services were

transmitted, together with the check for the fee, to said regional offices, it was a part of the scheme that the defendants would accept all of said applications and deposit all of said fees in the defendants' bank account, without any regard for the financial condition of said victim insofar as it concerned his ability to obtain a loan, and without any study, appraisal or evaluation of said victim's eligibility for a loan from any source whatsoever, [fol. 10] or the likelihood or possibility of the sale of his business to any source whatsoever.

2. That the defendants would accept at their regional office all applications from victims, when accompanied by a good check for the fee, and that such acceptance would consist of the regional director or one of his office clerks or secretaries signing his name at the bottom of said application, and depositing the victim's check in the defendants' bank account. That the defendants would not reject any applications except in some instances those which had not been signed by the victims, or in connection with which the victims had stopped payment on their checks before the defendants had an opportunity to cash them, and in some instances in which the full amount of the advance fee had not been received from a victim.

3. That following the said acceptance of the victims' applications the defendants would mail to said victims a signed copy of the accepted application, together with a form letter, for the purpose of lulling said victims by representing that their applications had been accepted and that the defendants would therefore perform for said victims the valuable services which the defendants had falsely and fraudulently represented that they would perform. That a further purpose thereof was to inform said victims that they could not obtain a refund of their fees, and that the contract was not cancellable and that the said victim was bound thereby and had no recourse for retrieving his money.

4. That the defendants would compile in a rudimentary form the financial data which had been obtained from said victim and prepare documents called business [fol. 11] and financial reports, which would then be sent to a few lending agencies. That such reports were sent

without any regard to or attempt at correlation between the type, size and location of the loan sought and the type and size of loan handled by said lending agencies. That the defendants, for the purpose of further lulling said victims would write to said victims, advising them of the sending out of said business and financial reports to the said lending agencies, in order to attempt to convince the victims that they had not been defrauded, and that the defendants were performing valuable and meaningful services on their behalves.

5. That upon receipt of the complaints of victims as to the false and fraudulent statements and promises which had been made to them by the defendants, and particularly by the salesmen or field representatives, the defendants would pretend to investigate said complaints, and would encourage the said field representatives to deny having made such statements and representations, and would write letters to the victims who made such complaints, stating to them that the salesman denied making such statements and representations, and that, therefore, it was impossible to refund the fee in such case.

6. That the defendants would reject the complaints of victims and refuse refunds of money demanded by the victims, giving as a reason the false and fraudulent representation that the written application for services executed by the victims defined the exact services to be rendered by the defendants and that the salesmen or field representatives were without authority to vary the terms of the application for services. That the aforesaid refusals to refund money would be accompanied by statements and letters seeking to induce the said victims to believe [fol. 12] that the defendants had performed and would perform valuable services for said victims, which said statements and representations were false and fraudulent, as the defendants then and there well knew and intended.

G. It was a further part of said scheme and artifice to defraud that the defendants would and did, through the medium of the oral representations of the salesmen and the aforesaid literature and publications and advertising prepared and distributed by the defendants, make and intend to make numerous false and fraudulent pretenses

representations and promises, which were known to and intended by the defendants to be false and fraudulent when made, to wit:

That the purpose of LSC was to assist small business in obtaining financing from accredited sources; that LSC would help secure loans and funds for business owners and operators; that LSC would secure loans for business owners and operators; that LSC would make loans to business owners and operators; that LSC would perform services for an applicant which would help him obtain a loan; that LSC would perform services for an applicant which would enable him to obtain a loan; that Field Representatives of LSC were qualified to evaluate businesses, evaluate financial requirements and possibilities of obtaining loans for prospective applicants and to advise said applicants financially and as to the chance of their obtaining a loan; that LSC would make business loans; that most LSC applicants obtained their loans; that loans would be made available to LSC applicants within stated periods, such as three weeks, five weeks, six weeks, eight weeks; that LSC made money available to firms on a business loan basis; that LSC could help a [fol. 13] company obtain long term financing in amounts from $5,000 to $500,000; that LSC was the representative of many commercial finance companies and had authority to speak for the said finance companies; that LSC field representatives had authority to state to applicants interest rates, financing terms, length of time for which the loan would run, and repayment schedule of loans; that LSC would provide an immediate answer regarding the possibility of securing additional cash for a business; that LSC served the nation's lending institutions; that LSC would carefully choose a lending source to which a loan application would be referred; that business and financial reports were distributed to selected commercial finance companies for their consideration; that LSC would submit loan applications to finance companies in the area in which said finance companies operated; that LSC would submit business and financial reports to lending institutions whose business it was to make loans of the type and in the amount being sought; that interest on loans

would be at the rate of 4½ percent, 5 percent, 5½ percent, 6 percent, or some other stated figure; that field representatives were specially trained; that the LSC field representative would not accept a loan application or a fee unless he was satisfied the applicant would obtain his loan; that field representatives were qualified to determine whether an applicant would likely receive his loan; that LSC employed qualified field representatives to interview owners or officers of firms who have contacted LSC; that LSC field representatives were qualified to fully describe the services of LSC and to discuss the various types of financing which may apply to the particular situation; that the regional office of LSC would not accept a fee or a loan application until and unless the said regional [fol. 14] office was satisfied the applicant would obtain his loan; that regional officials of LSC were qualified to determine and would determine whether a client would obtain financing; that personnel who were trained and qualified in the field of commercial lending at the regional office would make a detailed examination of a request for financing and would evaluate the same as to whether a loan would or could be obtained before accepting the financial service agreement on behalf of LSC; that if the financial service agreement were accepted by LSC the applicant was likely to get or would probably get a loan; that if the financial service agreement were accepted by LSC, the applicant would get a loan; that if the financial service agreement were accepted by LSC, LSC would make a loan to the applicant; that LSC would not cash a client's check until and unless it was determined the client would obtain his loan; that each regional office of LSC was staffed with an experienced financial officer; that the advance fee collected at the time of signing a financial service agreement would be refunded if the applicant did not obtain his loan; that the fee collected at the time of signing a financial service agreement would be refunded if the applicant paying the same did not qualify for a loan; that LSC was an integrated service geared to assist the nation's small business firms in their financial requirements; that LSC functions as a small business financial consultant; that LSC per-

forms a specialized business and financial consulting service; that LSC in behalf of commercial lending companies offers a current and complete business and financial report of prospective applicants; that LSC provided a valuable specialized service to all participants in its program; that LSC was staffed with personnel capable of analyzing financial statements and business data so as to [fol. 15] present in expert form the financial requirements of a client; that financial and personal statements of clients were analyzed by a large staff of skilled personnel employed by LSC; that business and financial reports would be sent to as many finance companies as necessary in order to obtain a loan for a client; that LSC had on its staff a former official of the Small Business Administration; that LSC employed trained personnel at both regional and home office headquarters in various departments necessary to process each phase of service to the individual client; that LSC used modern methods and specialized treatment so as to afford clients a thorough and comprehensive service; that LSC specialized in the financial problems of the small business man; that LSC had agreements with lending institutions by virtue of which said lending institutions would lend money to qualified applicants of LSC; that an additional fee would be due LSC from an applicant after the sought loan was granted or obtained; that LSC had established meaningful standards in the loan field which had been met by certain commercial finance companies, referred to in LSC's literature as "accredited lenders"; that Charles Ford & Associates, Inc. and BMA had lists of persons who wanted to buy certain types of business property; that they had ready buyers who would quickly purchase business property offered through BMA; that they would assist a man in selling his business without delay; that fees collected incident to the signing of a BMA contract would be refunded if the business was not sold in a specified time; that they sold a great many business properties for clients; that BMA was a real estate brokerage house; that BMA salesmen were experts in the real estate field; that BMA had buyer prospects for various types of business; that BMA used Remington Rand tabulating

[fol. 16] equipment to match seller and buyer; that BMA employed qualified personnel as field representatives who were capable of examining a business, appraising it, and gathering information which would lead to the sale of the said business; that the defendants would perform services of a value proportional to the amount of fee collected in each instance; that the defendants would perform more services and services of a greater value when the amount of loan or sales price sought was large than when it was small; that the schedules of advance fees prepared and used by the defendants were based upon the cost to the defendants and the value to the victims of the services which would be performed by said defendants in connection with a loan or business sale in the amounts set forth in said schedules; that the acceptance of applications for services by the defendants' regional offices meant approval of said applications and meant that the victim whose application was accepted was qualified to receive a loan and would receive a loan; that acceptance by the regional office of a victim's financial service agreement was synonymous with approval of a loan application by a bank; that the primary purpose of Lenders Service Corporation was to assist small business in obtaining financing from accredited sources; that the services of Lenders Service Corporation complement existing financial facilities available in the commercial lending field; that Lenders Service Corporation performed services in behalf of small business firms by evaluating financial data submitted by such business firms and submitting it to selected sources for funds and to sources which were carefully chosen to provide each applicant with the proper type and method of financial assistance; that a valuable specialized service would be provided to all participants with a minimum of time and cost; that [fol. 17] a qualified field representative would personally interview the owners or officers of each firm who had contacted Lenders Service Corporation; that it was the responsibility of such field representative to fully describe the services of Lenders Service Corporation to such owners or officers; that the financial information obtained from such business men by field representatives would

be distributed to selected commercial finance companies for their consideration; that Lenders Service Corporation would provide a valuable service for the best interest of both the finance companies and small business firms; that Lenders Service Corporation employed specially trained personnel in each phase of their operation; that it was the purpose of Lenders Service Corporation to work closely with banks, finance companies and other accredited financial sources, and to send to such sources reports of clients of Lenders Service Corporation located in the areas in which these sources operated; and all of said statements, representations and promises, as the defendants well knew, were false and fraudulent, and intended by the defendants so to be, and were made in order to deceive and defraud the persons intended to be defrauded.

H. That, on or about January 6, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to J. E. Claggett, Jr., 1006 N. W. 6th Avenue, Fort Lauderdale, Florida, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

[fol. 18] COUNT TWO

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about April 15, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Roger E. Barefield, Magnolia Grocery, 8th Street, S., Waynesboro, Georgia, to be sent and delivered by the Post Office of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT THREE

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about June 16, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to C. J. French, Florida Automotive Brake Corp., 327-29 America Street, Orlando, Florida, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT FOUR

1. The Grand Jurors reallege all of the allegations [fol. 19] of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about June 13, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Clarence R. Smith, C. R. Smith Supply, 642 W. Church Street, Orlando, Florida, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT FIVE

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about September 4, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to O. K. Livingston, Livingston Auto Sales Com-

pany, Inc., Route 4, Box 229, Andrews Highway, Georgetown, South Carolina, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT SIX

1. The Grand Jurors reallege all of the allegations of [fol. 20] Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about August 29, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Joe W. Collins, Mobile Milling Company, 112 Columbia Street, Chester, South Carolina, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT SEVEN

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about June 12, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Bernice Gadow, Barbara Karlee Shop, #5 Azalea Park Shop Center, Orlando, Florida, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT EIGHT

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

[fol. 21] 2. That, on or about June 11, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Doris E. Severns, Eliece's Dress Shop, 5819 Kuhl Avenue, Orlando, Florida, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT NINE

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about June 23, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to George M. Moody, Moody's Pharmacy, U. S. Highway No. 1 and Moody Boulevard, Bunnell, Florida, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT TEN

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about August 27, 1958, in the Atlanta Division of the Northern District of Georgia, for the [fol. 22] purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to W. E. Jeffords, Sr., Palmetto Furniture Company, Florence, South Carolina, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT ELEVEN

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about April 28, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Ray D. Humphrey, Humphrey's Appliance Repair and Exchange, 227 South Wayne Street, Milledgeville, Georgia, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT TWELVE

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about July 1, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and at-
[fol. 23] tempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Mr. A. N. Modrall, Lebanon Launderette, 316 North College Street, Lebanon, Tennessee, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT THIRTEEN

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about August 15, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents ad-

dressed to Mr. Joe Helms, Jessup and Helms Realty, 448 North Highway 29, Concord, N. C., to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT FOURTEEN

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about June 20, 1958, in the Atlatna Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized [fol. 24] depository for mail matter an envelope and contents addressed to James A. Pullen, East Alabama Supply Co., 801 Noble Street, Anniston, Alabama, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT FIFTEEN

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about October 13, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Mr. E. J. Murphy, Murphy Bros. Lumber Company, R. R. Newnan Highway, Grantville, Georgia, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT SIXTEEN

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about May 13, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to W. L. Albritton, Albritton Roofing Company, [fol. 25] 4938 - 42nd Avenue, N., St. Petersburg, Florida, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT SEVENTEEN

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about April 23, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to W. H. Carithers, Carithers Radio & T. V. Service, College Avenue, Jefferson, Georgia, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT EIGHTEEN

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about July 21, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Mr. A. L. Klotz, McComb Electric Supply Company, 120 S. Boulevard, McComb, Mississippi, to be sent and delivered by the Post Office Department of the [fol. 26] United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT NINETEEN

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about August 21, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to R. M. Garris, Garris Supply, 505 Dickinson Avenue, Greenville, North Carolina, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT TWENTY

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about July 14, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to P. Q. Brewer, Williams Equipment Company, P. O. Box 375, Quitman, Mississippi, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

[fol. 27] COUNT TWENTY-ONE

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about December 3, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents

addressed to N. A. Coffey, N. A. Coffey Company, 214 W. Third Street, Rome, Georgia, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT TWENTY-TWO

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about July 17, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Zeb Brevard, Hotel Savoy, 142 - 7th Avenue, N., Nashville, Tennessee, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT TWENTY-THREE

1. The Grand Jurors reallege all of the allegations of [fol. 28] Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about August 29, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Walter M. Harmon, Jr., Walt's Shell Service, 225 Richland Avenue, E., Aiken, South Carolina, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT TWENTY-FOUR

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about August 29, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to L. W. Addy, L. W. Addy Stamp Company, 1127 Park Street, Columbia, South Carolina, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT TWENTY-FIVE

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

[fol. 29] 2. That, on or about June 17, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Alvin Kurtz, Alvin Kurtz Plumbing & Heating, P.O. Box F-344, Sarasota, Florida, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT TWENTY-SIX

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about December 15, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Mrs. Mattie Seaton, Bailey's Grocery, 420 Hull Street, Jackson, Mississippi, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT TWENTY-SEVEN

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about May 16, 1959, in the Atlanta Division of the Northern District of Georgia, for the purpose [fol. 30] of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Mr. M. LeRoy Smith, Cawthon Hotel, 25 N. Conception Street, Mobile, Alabama, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT TWENTY-EIGHT

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about October 13, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to H. L. Hayworth, Toccoa Novelty Manufacturing Company, Box 163, Toccoa, Georgia, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT TWENTY-NINE

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about July 24, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully [fol. 31] and knowingly caused to be placed in an authorized depository for mail matter an envelope and

contents addressed to Mrs. Jeannette Curtis, Jeannette's Restaurant, 307 E. Carroll, Tullahoma, Tennessee, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT THIRTY

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about June 18, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to J. E. and A. J. Saliba, Saliba Realty Company, 905 N. Oats Street, Dothan, Alabama, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT THIRTY-ONE

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about May 16, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents [fol. 32] addressed to B. O. Stephenson, Southland Motel, P. O. Box 952, Crystal River, Florida, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT THIRTY-TWO

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about July 14, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to A. W. Tarpley, Alglo, Inc., 3500½ Broward Boulevard, Fort Lauderdale, Florida, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT THIRTY-THREE

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about July 1, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to W. C. Sinclair, Sinclair Food Service, Lebanon Road, Campbellsville, Kentucky, to be sent and de-
[fol. 33] livered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT THIRTY-FOUR

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about May 1, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to John Stanley, Jr., J. L. Stanley Company, 1351 Monarch Road, Atlanta, Georgia, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT THIRTY-FIVE

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about May 12, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Carroll L. Fulmer, Fulmer's Produce Company, 1303½ Columbia Road, Aiken, South Carolina, to be sent and delivered by the Post Office Department of the [fol. 34] United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT THIRTY-SIX

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about June 13, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to John P. Jackson, Jackson Wheel Alignment, 525 N. Cove Boulevard, Panama City, Florida, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT THIRTY-SEVEN

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about April 23, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized

depository for mail matter an envelope and contents addressed to W. C. Bradbury, College Park Manufacturing Company, 1091 Herndon Street, N. W., Atlanta, Georgia, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

[fol. 35] COUNT THIRTY-EIGHT

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about March 23, 1959, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to William Tate, Grocery Store & Cafe, 121 Lewis Street, Summerville, Georgia, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT THIRTY-NINE

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about June 4, 1958, in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and attempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to George Vizenthal, All Miami Appliances, Inc., 2165 W. Flagler, Miami, Florida, to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT FORTY

1. The Grand Jurors reallege all of the allegations of [fol. 36] Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about January 25, 1959, in the Atlanta Division of the Northern District of Georgia, the defendants, for the purpose of executing said scheme and artifice, did unlawfully, wilfully and knowingly cause to be placed in an authorized depository for mail matter at Atlanta, Georgia, copies of the Sunday, January 25, 1959, Atlanta Journal-Constitution, a newspaper published in Atlanta, Georgia, the exact quantity being to the Grand Jurors unknown, containing on page 6-C of the classified advertising section a certain advertisement reading as follows:

"SALESMEN
THINKERS
IS WHAT WE WANT
MEN WHO CAN USE
GOD'S GIFT — THE
BRAIN — WITHOUT
GETTING IT
RUPTURED

To these men regardless of background, we offer a golden opportunity to from $15,000 to $30,000 a year on straight commission, work from qualified leads (not just names), interviewing businessmen on the problems of Small Business Finance. Must be over 30, have a car and be free to travel 7-state area. Home weekends. Phone Mr. Steele, TR. 2-0322."

to be sent and delivered by the Post Office of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT FORTY-ONE

1. The Grand Jurors reallege all of the allegations of [fol. 37] Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about January 31, 1959, in the Atlanta Division of the Northern District of Georgia, the defendants, for the purpose of executing said scheme and artifice, did unlawfully, wilfully and knowingly cause to be placed in an authorized depository for mail matter

at Atlanta, Georgia, copies of the Saturday, January 31, 1959, Atlanta Journal, a newspaper published in Atlanta, Georgia, the exact quantity being to the Grand Jurors unknown, containing on page 6-C of the classified advertising section a certain advertisement reading as follows:

"BOOK MEN
OVER 30 YEARS OF AGE

We have several ex-bookmen on our staff that are earning from $300 to $600 week on straight commission. Work from qualified confirmed leads (not just names), calling businessmen in 3-4 state area, home weekends, no night work, no cancellations. You keep all you earn. Phone Mr. J. N. Steele, TR. 2-0322."

to be sent and delivered by the Post Office of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT FORTY-TWO

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about March 1, 1959, in the Atlanta Division of the Northern District of Georgia, the defendants, for the purpose of executing said scheme and artifice and attempting to do so, did unlawfully, wilfully [fol. 38] and knowingly cause to be delivered by mail, according to the directions thereon, an envelope and contents addressed and directed to Roy and Hefner, 376 Spring Street, N.W., Atlanta, Georgia, in violation of Section 1341, Title 18, U.S.C.A.

COUNT FORTY-THREE

1. The Grand Jurors reallege all of the allegations of Count One of this Indictment, except those contained in paragraph No. H thereof.

2. That, on or about January 27, 1958 in the Atlanta Division of the Northern District of Georgia, for the purpose of executing said scheme and artifice and at-

tempting to do so, the defendants unlawfully, wilfully and knowingly caused to be placed in an authorized depository for mail matter an envelope and contents addressed to Charles E. English, President, English Lumber Company, Inc., Sweeten Creek Road, Asheville, N. C., to be sent and delivered by the Post Office Department of the United States, in violation of Section 1341, Title 18, U.S.C.A.

COUNT FORTY-FOUR

That, beginning on or about March 9, 1956, and continuing until June 1, 1959, in the Atlanta Division of the Northern District of Georgia, the defendants aforesaid did unlawfully, wilfully, and knowingly combine, conspire, confederate, agree and have a tacit understanding with each other and with Jack Allen, A. Wayne Jones, F. J. Weber, Jerry Routman, Lester E. Butler, Thomas N. Clark, Lloyd Ellis, J. B. Miller, James F. Pike, Francis J. Gallagher, and R. L. Higgins, and with a person and persons to the Grand Jurors unknown, who are named [fol. 39] herein as co-conspirators and not as defendants, to commit certain offenses against the United States, that is to say, the use of the mails in furtherance and execution of a scheme and artifice to defraud and for obtaining money and property by means of false pretenses, representations and promises, which said scheme and artifice, false pretenses, representations and promises and use of the mails in furtherance thereof are described and set forth in the previous counts of this indictment; which description of said scheme and artifice is incorporated herein by reference and made a part of this count, as though more fully set forth and described herein, and for the purpose of executing and attempting to execute the said scheme and artifice to defraud, to place and cause to be placed in authorized depositories for mail matter of the United States to be sent and delivered by the Post Office Establishment of the United States, according to the directions thereon, certain letters, circulars and other written and printed matter, all as charged and alleged in the previous counts of this indictment.

And the Grand Jurors further charge that in furtherance of said unlawful conspiracy and to effect the objects and purposes thereof, said defendants and co-conspirators did and performed numerous overt acts, among which were the following:

1. All of the acts of mailing of letters and documents alleged in the preceding counts of this indictment, on the respective dates and at the places alleged in said counts.

2. On or about March 9, 1956, Ralph Sampson, Herbert Ruttenberg and Leonard Miller formed a corporation [fol. 40] known as Charles Ford & Associates, Inc., a Delaware corporation.

3. On May 1, 1957, Ralph Sampson and Leonard Miller filed a certificate of amendment changing the name of Charles Ford & Associates, Inc. to Business Mart of America, Inc.

4. On December 18, 1957, Ralph Sampson, Herbert Ruttenberg and Leonard Miller formed a corporation known as Lenders Service Corporation, a California corporation.

5. On May 6, 1958, Walter A. Arata had a conversation with Roger E. Barefield in Waynesboro, Georgia, in the course of which he told Barefield that if the latter's application for services was accepted by the Lenders Service Corporation he would get a loan in from six to seven weeks.

6. On August 28, 1956, Paul C. Brooks had a conversation with Joe W. Collins in Chester, South Carolina, in the course of which he told Collins that the payment of an advance fee by a Cashier's Check would expedite the obtaining of a loan by ten to twelve days.

7. On June 10, 1958, David B. Gray had a conversation with Mrs. Doris Severns in Orlando, Florida, and told her that Lenders Service Corporation had obtained many loans and that if her application was approved she would get a loan within six to eight weeks.

8. On April 25, 1958, George K. Greer had a conversation with Ray D. Humphrey in Milledgeville, Georgia, and told him that a loan would be obtained within ninety days.

[fol. 41] 9. On August 14, 1958, Ed Guettel had a conversation with Joe Helms in Concord, North Carolina, and told him that he would obtain a loan within two weeks through the services of Lenders Service Corporation or else would have his fee refunded.

10. On October 9, 1958, Wesley M. Isbell had a conversation with Mr. E. J. Murphy in Grantville, Georgia, and told Mr. Murphy that his fee would be refunded if a loan was not obtained.

11. On April 22, 1958, Chris E. Jensen had a conversation with W. H. Carithers in Jefferson, Georgia, and told Mr. Carithers that a loan would be obtained through the services of Lenders Service Corporation within a maximum of eight weeks.

12. That on or about July 12, 1958, David A. Landers had a conversation with P. Q. Brewer in Quitman, Mississippi, and stated that if the application was accepted a loan would be made.

13. On November 25, 1958, Ray L. Prewitt had a conversation with N. A. Coffey in Rome, Georgia, and stated to Mr. Coffey that Lenders Service Corporation had obtained loans for businesses within ninety days.

14. That, on or about May 25, 1959, Frank Siersma had a conversation with Leroy Smith in Mobile, Alabama, and stated that if Mr. Smith's application was accepted by Lenders Service Corporation that was exactly the same as the money being granted.

15. On October 10, 1958, Burr F. Sprague had a conversation with H. L. Hayworth in Toccoa, Georgia, and stated that Lenders Service Corporation would obtain a loan for Mr. Hayworth in six to seven weeks.

[fol. 42] 16. On June 16, 1958, William L. Wallen had a conversation with Joseph E. Saliba in Dothan, Alabama, and told Mr. Saliba that he could obtain a loan within a couple of weeks through the services of Lenders Service Corporation.

17. On August 14, 1958, Ward Williams had a conversation with Mr. James W. Boyette, Jr. in Smithfield, North Carolina, and told Mr. Boyette that Lenders Service Corporation made loans and that if a loan was not obtained the advance fee would be refunded.

18. On April 30, 1958, E. L. Wilson had a conversation with John M. Stanley, Jr., in Atlanta, Georgia, and stated that if Mr. Stanley's application was accepted by Lenders Service Corporation he would obtain a loan in from thirty to ninety days.

19. On June 1, 1958, E. S. Wohrle had a conversation with Milton V. Herstik in Miami, Florida, and told him that the obtaining or granting of a loan by Lenders Service Corporation was guaranteed or the advance fee would be refunded.

20. On June 16, 1958, Burt Roland had a conversation with Alvin Kurtz in Sarasota, Florida, and stated that Lenders Service Corporation had obtained loans for many business firms and that there was no reason to believe that Mr. Kurtz would not obtain a loan from Lenders Service Corporation.

And the Grand Jurors charge that all of the aforesaid overt acts were committed in furtherance of said conspiracy and to effect the objects and purposes of the same, in violation of Section 371, Title 18, U.S.C.A.

[fol. 43] A True Bill

At Atlanta, Georgia

/s/ Harry B. Horsey, Jr.
Foreman

/s/ Charles D. Read, Jr.
United States Attorney

/s/ John W. Stokes, Jr.
Assistant United States Attorney

[fol. 44]

IN UNITED STATES DISTRICT COURT

MOTION NO. 1

DEFENDANTS' MOTIONS TO DISMISS—
Filed November 10, 1960

Now comes each of the Defendants named above, and separately and severally from other Defendants, makes and files this his or its Motion to Dismiss the Indictment against him or it, and each and every Count of said Indictment, upon the ground that said Indictment taken as a whole, and that each and every Count thereof taken separately, fails to charge an offense against the laws of the United States committed by said Defendant.

Wherefore, each Defendant prays that this his or its Motion be considered by the Court and that the Indictment and each and every Count thereof be dismissed as to him or it.

Of Counsel:
SUTHERLAND, ASBIL & BRENNAN
1516 First National Bank Bldg.
Atlanta, Georgia

BUCHANAN, EDENFIELD & SIZEMORE
C & S National Bank Building
Atlanta, Georgia

NEWELL EDENFIELD
RANDOLPH W. THROWER
MADISON RICHARDSON
D. R. CUMMING, JR.

[fol. 45]

IN UNITED STATES DISTRICT COURT

RESPONSE OF THE UNITED STATES TO MOTIONS TO DISMISS Nos. 1, 2, 3, AND 4—Filed December 2, 1960

Now comes the United States Attorney for and on behalf of the United States of America, and, in response to motions to dismiss Nos. 1, 2, 3, and 4 filed on behalf of the defendants in the above-stated case, shows:

—1—

That all of the said motions are opposed on each and every ground set forth therein.

—2—

That none of said motions sets forth a lawful basis for dismissal of the indictment.

—3—

That the indictment correctly and properly alleges offenses against the laws of the United States and violations by the defendants of Sections 371 and 1341, Title 18, U.S.C.A.

WHEREFORE, it is prayed that said motions be overruled and denied.

CHARLES D. READ, JR.
United States Attorney
JOHN W. STOKES, JR.
Assistant United States Attorney

[fol. 46]

IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL BRIEF OF THE UNITED STATES—
Filed January 4, 1961

The indictment uses as its mailings three types of document. One is the carbon copy of the "Financial Service Agreement" referred to in Paragraph F (3) at pages 8-9 of the indictment. A copy of one of said forms is attached hereto and included as a part of this brief. Counts 1, 3, 4, 5, 6, 8, 9, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 34, 35, 36, 37, 39, 42 and 43 are based on such mailings.

Counts 2, 7, 12, 16, 31, 33, and 38 are based upon the mailings of a brochure entitled "When our Representative Calls," or some similar title. They are generally referred to in Paragraph B, page 4, and in parts of Paragraph G, pages 10-15. These brochures were mailed to the victims prior to the salesmen calling on them. A copy of such a brochure is attached hereto.

The third type of mailing, used in Counts 40 and 41, is the newspaper ads used for securing salesmen, as described in Paragraph C, page 4, of the indictment.

CONTRACT MAILINGS

The customer's copy of the financial service agreement, accompanied by a letter, was in each instance sent to him by certified mail, return receipt requested. A copy of the contract, letter and envelope relating to Count Three is included in this brief. As will be seen, the agreement itself provides that it "shall become effective when accepted at any Regional Office of Lenders Service Corporation. Notification of acceptance shall be made by returning to applicant a copy of this agreement executed by duly authorized personnel. In the event this agreement is not accepted by LSC the entire fee will be re-
[fol. 47] funded." Thus, while a check had been obtained from the victim prior to the mailing of the so-labeled "acceptance copy" to him, its receipt by the defendants was conditional upon acceptance. "Since communication

of intention is essential to an agreement . . . an acceptance, like an offer, . . . must, as a rule, be communicated to the offeror or put in the course of communication by an act." *17 Corpus Juris Secundum, pages 395-7.* "Where an express acceptance by the opposite party is required by the offer in order to establish a contract, the fact of such subsequent acceptance must be communicated to the offeror by the opposite party or competent agent of such party;" *Federal Farm Mortgage Corp.* v. *Dixon,* 185 Ga. 466, at p. 469, 195 S.E. 414.

Because of this it was essential that the acceptance copy be sent to the victim, or "applicant" as the contract calls him, in order for the defendants to make even a rudimentary claim to a right to keep the money. They chose the United States Mails as the medium of transmission, and such use was not only in furtherance of the scheme, but was absolutely essential, if the defendants were to keep the money without immediately exposing the fraud. It is significant that, whatever they may now claim, the defendants thought seriously enough of the effect of these mailings when they were made to use certified mail, return receipt requested, in every single instance.

Almost every count mailing involves a "split-fee" contract. These falsities were in addition to others appearing on the face of the document. True it is, that the defendants allegedly had no intention of obtaining the loans sought by their victims, and might be said, therefore, to have had no intention of obtaining more money in the form of the other half of the split fee. But they did not [fol. 48] tell the victims of this fact. In the 7th Circuit case of *U. S.* v. *Earnhardt,* 153 F. 2d 472, cert. den. 328 U. S. 858, the defendants had sold purportedly "oil-bearing" lands to the victims, and urged that since the claims by the defendants that they would assist investors in reselling the lands at no loss were false, the title to the lands was not in question and mailings of deeds to the victims after payment had been received were not in furtherance of the scheme. The court rejected this theory, saying "apart from the fact that several letters enclosing deeds also stated balances due on the accounts, obviously indicating that the ultimate purpose of the scheme, to

obtain money, had not been completed, we note also the fact that if the lands were to be resold at a profit, deeds proving title were essential, and their delivery to investors was necessary to the execution of the scheme." (p. 474)

To paraphrase this language in terms of the present case, it might be said that "while none of the copies of the executed financial service agreements sought further money payments of an immediate nature, they did state balances which would be due when the loans were obtained, and we note also the fact that if the applicant's original fee were to be retained and the contingent fee even possibly to be collected, acceptance of the agreement by the corporation, and communication of that acceptance to the client were essential, and the mailing of that acceptance to the applicant was necessary to the execution of the scheme."

The application of the *Parr*, *Kann* and *Gretchell* decisions to these mailings are discussed later in this brief.

Pamphlet Mailings

The counts concerning mailings of the "Before our [fol. 49] Representative Calls" pamphlets relate to mailings clearly intended to further the scheme. These pamphlets were sent to the victims after they had evinced an interest by sending in their business reply cards and before the salesman called on them.

The full use of the false implications they contain is mainly a matter of proof at the trial. They are designed through a seemingly innocuous discussion of the finance field to build the prestige of, and smooth the way for the salesman who was to follow. They contained outright false statements as to so-called "correspondent banks."

As we noted at the beginning of this brief, these mailings are described under the general terms of Paragraphs B and G of Count One. The fact that their use is not as specifically outlined in the description of the scheme, as are the accepted financial service agreements, does not limit their introduction in evidence in support of the counts based thereon. As outlined in our original brief, the scheme need not plan the use of the mails at all.

Weiss v. *U. S.*, 5th Circ., 122 F. 2d 675, cert. den. 314 U.S. 678, *Stapp* v. *U. S.*, 5th Circ., 120 F. 2d 898.

". . . it is sufficient that, having devised a scheme to defraud, the mails are actually used in effecting it; and a purpose to use the mails is no longer an essential element of the scheme devised, as it was under the former statute." *Blue* v. *U. S.*, 6th Circ., 138 F. 2d 351, at p. 359, cert. den. 322 U.S. 736.

Furthermore, the gist of the offense is the mailing and the sufficiency of detail in pleading is concerned with the use of the mails, not the description of the scheme. "The gist of the offense is the use of the mails and the scheme to defraud need not to be set forth with such precision as [fol. 50] if it were the gist of the offense." *Lechs* v. *U. S.*, 5th Circ., 118 F. 2d 246, at p. 247, cert. den. 314 U.S. 617, *U. S.* v. *Kniken*, D.C. Texas, 101 F.S. 929, aff. 196 F. 2d 223, cert. den. 344 U.S. 867, *Busch* v. *U. S.*, 8th Circ., 52 F. 2d 79, cert. den. 284 U.S. 687.

The newspaper counts are believed to need no further discussion.

The Parr, Getchell and Kann Decisions

In their supplemental brief the defendants contend in vigorous language that *Parr* v. *U. S.*, 363 U.S. 370, *Getchell* v. *U. S.*, 282 F. 2d 681, and (by implication) *Kann* v. *U. S.*, 323 U.S. 88, rule out the use by the government of the count mailings based on the acceptance copies of the financial service agreements. They argue that these cases hold that once money is obtained from the victim, further mailings cannot be the basis of an indictment, *whether or not the scheme had ended. Page 5, movant's reply brief.* A careful reading of the cases shows that they say nothing of the sort.

We have already outlined herein the factual situation surrounding the questioned mailings. The return of the accepted agreement was vital to the successful continuation of the scheme. Clearly, the defendants would not have been so naive as to think they could obtain the money and stop at that point; if so, the fraud would have become common knowledge early in its operation.

In *Parr*, the defendants operated a scheme to misappropriate School District revenues, the indictment containing nineteen counts of mail fraud and one of conspiracy. The mailings, to recite some illustrations, were: (1) notice to a taxpayer of a modification in the assessed [fol. 51] value of his property and advising of the tax owed (Count 1); (2) letter to a taxpayer giving notice of a hearing to be held by the Board to determine the taxable value of the taxpayer's property (Counts 2 and 5); (3) check of taxpayer in payment of taxes (Counts 3, 4, 6, 8 through 16); (4) mailings in connection with credit cards which will be later discussed (Counts 17, 18, and 19).

The Court first considered Counts 1 through 16, inclusive, saying:

> "The crucial question, respecting Counts 1 through 16 of the indictment, then comes down to whether the legally compelled mailings of the lawful—or, more properly, what are not charged or shown to have been unlawful—letters, tax statements, checks and receipts, complained of in those counts, properly may be said to have been for the purpose of executing a scheme to defraud because those legally compelled to cause and causing those mailings planned to steal an indefinite part of the receipts."

In answer to that question the Court said, in part:

> ". . . we think it cannot be said that mailings made or caused to be made under the imperative command of duty imposed by state law are criminal under the federal mail fraud statute, even though some of those who are so required to do the mailing for the District plan to steal, when or after received, some indefinite part of its moneys."

Clearly, the issue involved in the first sixteen counts of *Parr* is not involved in the instant case: there can be no issue that the mailings of the brochures or other documents were "legally compelled" in the sense that the tax notices referred to in the *Parr* case were compelled.

[fol. 52] Counts 17, 18 and 19 of the *Parr* indictment reached the activities of two of the defendants who util-

ized a credit card issued to the District to purchase gasoline and other products for their own use. In Count 17 the mailing was of "an invoice or statement" of Continental Oil Company, which issued the credit card, to the District for merchandise; Count 18 charged a mailing of the District's check to Continental Oil Company to pay for merchandise purchased; Count 19 charged a mailing of "a statement" of Continental Oil Company for merchandise purchased. With reference to these counts the Court said:

> "Counts 17, 18 and 19 of the indictment relate to a different subject. They charged, and there was evidence tending to show, that petitioners Oscar Carrillio, Sr. and Garza fraudulently obtained gasoline and other filling station products and services for themselves upon the credit card and at the expense of the District knowing, or charged with knowledge, that the oil company would use the mails in billing the District for those things. The mailings complained of in those counts were two invoices, said to contain amounts for items so procured by Carrillio and Garza, mailed by the oil company, at Houston, to the District, at Benavides, and the District's check mailed to the oil company, at Houston, in payment of the latter invoice. We think these counts are ruled by *Kann* v. *U.S.*, supra. Here, as in *Kann*, '(t)he scheme in each case had reached fruition' when Carrillio and Garza received the goods and services complained of. 'The persons intended to receive the (goods and services) had received (them) irrevocably. It was immaterial to them, or to any consummation of the scheme, how the (oil company) . . . would collect from the (District). It cannot be said that the mailings in question were for the purpose of [fol. 53] executing the scheme, as the statute requires.' 323 U.S., at 94."

The simple enunciation of the Supreme Court in the holding concerning the credit cards was that the scheme ended with each purchase, i. e., when the defendants received the merchandise. It is clear that the Court did

not hold a continuing scheme to be involved. The question we here approach is to distinguish the transactions from those of the credit cards.

It cannot be concluded from *Parr* that the Court overruled the continuing scheme exception as discussed in *Kann* v. *United States*, 323 U.S. 88 (1944), and recognized by the Circuit Court of Appeals, Fifth Circuit, in *Bauman* v. *United States*, 156 F. 2d 534 (1946); *United States* v. *Kuiken*, 101 F. Supp. 929 (W.D. Texas, 1951), affirmed, 196 F. 2d 223, certiorari denied, 344 U.S. 867, *United States* v. *Kreuter*, 119 F. Supp. 227 (W.D. Texas, 1954), affirmed, 218 F. 2d 532, certiorari denied, 349 U.S. 932.

In discussing the *Getchell* and *Parr* cases, it should first be established, how far, if at all, they have altered the law regarding mail fraud violations.

Getchell v. *U.S.*, 5th Circ., 282 F. 2d 681, as to the parts relied on by movants, is based upon the Securities Act of 1933, and not upon the mail fraud statute. This case cites the *Parr* case in an offhand fashion at p. 684, at a point in the opinion at which it is held that a certain mailing was "merely incidental and collateral to the (alleged) scheme and not a part of it." This refers to a letter from an attorney for the main defrauder, asking for the names in which the addressee wants his stock certificates issued. The recipient, one Fox, had already [fol. 54] fully and irrevocably paid for the shares which were to be issued to him.

In its opinion the Fifth Circuit cites *Kann* v. *U.S.*, 323 U.S. 88, as well as *Parr*, and the language quoted herein was taken by the court directly from the *Kann* decision. It appears from this that the *Parr* case was cited in connection with the gasoline credit card counts, and further that the Fifth Circuit is relying on, not departing from the *Kann* case. In citing both cases, virtually in the same breath, the court clearly indicates no belief that the *Parr* case has overruled, departed from, or extended the principles set down in *Kann*.

In the *Parr* case itself, the gasoline credit card counts are thrown out specifically on the ground that "they are ruled by *Kann* v. *U.S.*, supra." 370 U.S., at p. 393. The

dissenting opinion takes issue only with the majority's analysis of the facts in the case being consonant with those in the *Kann* case.

It is not necessary that we attempt to support the position of the dissenting Justices in *Parr* that there was a continuing scheme; our task is easier here because the indictment in the instant case details a scheme to defraud various named victims during a particular period of time, there being a factual recitation of a continuing scheme so that the mailings were all within the life of the scheme and in furtherance thereof. The indictment, we submit, spells a continuing course of conduct directed to the obtaining of money from victim after victim, the business of Lenders running at full blast to round up as many victims as could be induced to purchase the services of Lenders. In this connection, it is to be observed that the Supreme Court in *Parr* did not hold, in the first six- [fol. 55] teen counts, that the scheme ended with a receipt of each taxpayer's check, but instead rested its conclusion on other grounds, which we have discussed. Clearly, if a continuing scheme did not exist with reference to those counts, the Court would not have been put to the difficulties which it expressed and could have resolved the issue on that simple ground. Equally of interest, the defendants did not contend that a continuing scheme did not exist in the sixteen counts. The conclusion, accordingly, is inescapable that the Supreme Court enunciated the lack of a continuing scheme in the three credit card counts, reaching that view on the basis of the peculiar facts of those counts which are not here pertinent.

In evaluating these cases, therefore, it seems necessary basically to get back to *Kann* v. *U.S.* and see what it holds.

In the *Kann* case the defendants obtained the fruits of the fraud from the victims (in an indirect fashion) in the form of checks, which were cashed by defendants at a local bank. This bank then mailed these checks to the bank on which they were drawn, for collection. These were the mailings used in the prosecution. The court held that these mailings were not in furtherance of the scheme. The court said "The banks which cashed or

credited the checks, being holders in due course, were entitled to collect from the drawee bank in each case and the drawer had no defense to payment. The scheme in each case had reached fruition." 323 U.S. 88, at p. 94.

The *Kann* decision was no new departure in the field of mail fraud law. In it the Supreme Court cited as precedent cases dating back to 1932. (*McNear* v. *U.S.*, 10th Circ., 60 F. 2d 861, cited in note 6, 323 U.S., at p. 94.) The *McNear* case cites as its authority the District [fol. 56] Court case of *U.S.* v. *Dale*, 230 F. 750, which was decided in 1915.

Certainly there is no fiat implicit in the *Kann* case to throw out all mail fraud cases where the money has been obtained prior to use of the mails. The opinion, in fact specifically states otherwise, when, at pages 94-5, it says:

> "The case is to be distinguished from those where the mails are used prior to, and as one step toward the receipt of the fruits of the fraud, such as *United States* v. *Kenofskey*, 243 U.S. 440. Also to be distinguished are cases where the use of the mails is a means of concealment so that further frauds which are part of the scheme may be perpetrated. In these the mailing has ordinarily had a much closer relation to further fraudulent conduct than has the mere clearing of a check, although it is conceivable that this alone, in some settings, would be enough."

Cited in illustration of the latter class of cases are *U.S.* v. *Lowe*, 7th Circ., 115 F. 2d 596, cert. den. 311 U.S. U.S. 717, *U.S.* v. *Riedel*, 7th Circ., 126 F. 2d 81, and *Dunham* v. *U.S.*, 5th Circ., 125 F. 2d 895.

The *Lowe* case involves a check-kiting scheme. In *Dunham* v. *U.S.*, the Fifth Circuit Court of Appeals sustained a conviction under the following facts: The defendant obtained funds from his victims upon the pretense that he was going to invest it for them and share the profits. Instead of doing this he used a large part of the money for his own personal expenses. The mailings charged consisted of monthly statements sent to the investors, purporting to show the standings of their accounts, and the "profits" they were credited with. Many

of the investors sent him more money after receiving these reports. While the points made on the appeal are not all specifically stated, it was clearly a case where the [fol. 57] original money was obtained prior to the mailings, and illustrates the correct criterion which is that of whether the mailing acts in some way to further a continuing scheme, whether or not the money has been obtained.

In *U.S.* v. *Riedel,* also cited in the *Kann* case, 126 F. 2d, p. 83, the court said:

> "If the scheme to defraud were over, or had been abandoned, there could be no use of the mails *in furtherance* of it. The words "in furtherance of" as applied to the scheme may be established only when the scheme is still in existence."
>
> "We are satisfied, however, that the evidence shows, and rather clearly, that the scheme was not over. A scheme to defraud may well include later efforts to avoid detection of the fraud. A fraudulent scheme would hardly be undertaken, save for profit to the plotters. Avoidance of detection and prevention of recovery of money lost by the victims are within, and often a material part of, the illegal scheme. Further profit from the scheme to defraud, as such, may be over, and yet the scheme itself not be ended."

To go further in evaluating the *Kann* case, it is helpful to examine a few of the many cases decided since it was, in which the facts are distingiushed from those in *Kann.*

Among these are: *U.S.* v. *Earnhardt,* 7th Circ., 153 F. 2d 472, cert. den. 328 U.S. 888 (mailing of deeds to purchasers of purported oil-bearing lands); *Clark* v. *U.S.,* D.C. Circ., 208 F. 2d 840, cert. den. 346 U.S. 865 (money obtained in 1941, purportedly to be invested by defendant on behalf of victim; mailings used were lulling letters written to victim ten years later, in 1951, when she got suspicious and suggested an accounting); *Bauman* v. *U.S.,* 5th Circ., 156 F. 2d 534 (forged check cashed for [fol. 58] defendant by a hotel, the check subsequently being mailed to the bank on which drawn).

The *Clark* case, supra, cites a number of others in support of the position taken there. Of interest are *U. S.* v. *Weimes*, 7th Circ., 157 F. 2d 797, in which the court said:

> ". . . a scheme to defraud may well include later efforts to avoid detection of the fraud. . . . There is ample evidence to indicate a continuation of activities designed to prevent too much complaint or inquiry, even after attempts from the limited partners had ceased, and the 'mailings' fall within this period of continued activity and cannot be said to be not 'in furtherance' of the scheme." (p. 799).

In *U. S.* v. *McAlpine*, 129 F. 2d 737, the same court, in an opinion written prior to the *Kann* decision, well described this area of fraud, saying:

> "Even though the scheme be successfully perpetrated by obtaining the victim's property, it still may be important to the schemer's purpose to adopt methods by which the victim *may* be lulled into a sense of security, or kept in the dark as to the true situation. Such activities, however, would not constitute a new scheme—they would merely serve in aid of the old. In other words, the methods and means employed to accomplish the object of a scheme to defraud are limited only by the ingenuity of the originator." (p. 739-40)

Conclusion

The movants here have argued, so vigorously as to sound very convincing, that the *Kann* case, and *Parr* case which followed it, have ruled that a mailing made after the money is collected is not a valid basis of prosecution, whether the scheme is ended, or not. We have, we [fol. 59] believe, shown here that neither of these cases, nor any other case, has ever established such a rule. We have cited cases decided before and after the *Kann* case and the *Parr* case to show that the question is now, *as it has always been*, that of whether the mailings is in furtherance of the scheme.

The indictment in this case is clearly sufficient, and the motions to dismiss should be overruled.

CHARLES D. READ, JR.
United States Attorney

JOHN W. STOKES, JR.
Assistant United States Attorney

[fol. 60]

Lenders Service Corporation
795 PEACHTREE BLDG., SUITE 594
ATLANTA 8, GEORGIA

ATLANTA JUN16'58 GA. 16

ATLANTA JUN16'58 GA. 16

ATLANTA JUN16'58 GA. 16

JWD AUG 5 1958

RETURN RECEIPT REQUESTED

C. J. French
Fla. Automotive Brake Corp.
327-29 America St.
Orlando, Fla.

JUN 19 10 58

CERTIFIED MAIL
No 573328

61212

60

49

[fol. 61]

61

TRINITY 6747

Lenders Service Corporation

795 PEACHTREE BLDG SUITE 594 ATLANTA 8, GEORGIA

June 16, 1958

C. J. French
327-29 America St.
Orlando, Fla.

Dear Mr. French:

We wish to thank you for the confidence you have expressed in our firm by retaining us to represent you.

Enclosed please find the acceptance copy of your Financial Service Agreement which has been properly executed by our firm.

You will also find enclosed five envelopes with enclosures inside. Four of these envelopes (marked: accountant, bank, and two to suppliers) are to be addressed and mailed by you to each of these parties. It is most important that you sign each one of the authorization cards that you mail.

The remaining envelope which is addressed to our office and contains a personal history form should be immediately returned with the history form filled out.

As soon as all the enclosed material has been received by us, we will send you a proof copy of our Business and Financial Report for your approval.

We sincerely trust that our work in your behalf will result in complete satisfaction.

Sincerely yours,
LENDERS SERVICE CORPORATION

Charles McCarthy
Regional Director

CMc/aw
encl;

JWD Aug 5 1958

[fol. 62]

Lenders Service Corporation

NEW YORK CHICAGO LOS ANGELES SAN FRANCISCO DENVER ATLANTA

FINANCIAL SERVICE AGREEMENT

Individual's Name Chester T Peach Date June 11-58

Business Name Peach Motor Finance Corp Phone No 688-5791

Business Address 329 Hurt St. Check No

City Cedar State Ind Amount Desired $ 2,200.00

Applicant Agrees To:

Provide LSC's authorized representative all necessary information to assist in preparation of Applicant's Preliminary Data Report.

Provide financial statements on standard LSC forms.

Provide credit references and bank references on standard LSC forms.

Provide any additional information or references promptly to LSC and/or lending companies subsequently requested.

Pay to LSC the sum of $ 200.00 as follows 200.00 this date and 100.00 on or before June 20 58 - 61.00 each month thereafter until loan is made.

Lenders Service Corporation Agrees To:

Review the preliminary data compiled and submitted by authorized representative for acceptance by LSC.

Publish and distribute to various finance companies a condensed description of applicants financial requirements immediately after acceptance of agreement.

Furnish necessary forms for applicant to provide data requested by LSC.

Prepare a detailed printed report describing the financial history and position of applicant's business based upon affidavit and information provided by applicant.

Submit printed report to various lending agencies and or individual lenders available to LSC.

Furnish applicant with sample copies of printed reports and inform applicant of any pertinent developments relating to this agreement.

This agreement shall become effective when accepted at any Regional Office of Lenders Service Corporation. Notification of acceptance shall be made by returning to applicant a copy of this agreement executed by duly authorized personnel. In the event this agreement is not accepted by LSC the entire fee will be refunded.

LSC agrees to perform its financial consulting services on behalf of Applicant with the understanding that such services do not include negotiation of loans or other capital grants to Applicant. Applicant hereby authorizes LSC to act on its (their) behalf by selling financial data and other information furnished by Applicant to lenders and lending institutions and authorizes LSC to confirm such data within the discretion of LSC by direct correspondence with Applicant's credit and bank references, accountant, or by other means.

LSC representatives are not authorized to change, waive, delete or add to any of the printed provisions of this agreement other than to complete this form in designated spaces. LSC will immediately render services to applicant based upon Applicant's Preliminary Data Report; therefore this agreement is not cancelable after acceptance by LSC. This agreement, a copy of which applicant has retained, contains the entire understanding between us, and no other representation, statement or promise has been made that is not set forth herein. Applicant to pay reasonable attorney's fees and all costs of collection in the event of a default in the above payment schedule. Receipt of the above sum on behalf of LSC is hereby acknowledged. Make all checks and drafts payable to Lenders Service Corporation.

LENDERS SERVICE CORPORATION

M. E. Arata
Authorized Representative

Accepted in Atlanta, Ga. 6/24/58
Date

By Milton K. Ley
Regional Director

Peach Motor Finance Corp.
Name of Business

By Chester T Peach
Applicant Title

AUG 5

LATER in APRIL I
Received THIS Letter

64

Perhaps you and he can save valuable time if you will give some preliminary thought to the various types of additional business funds that are available through commercial lending companies and other accredited sources.

Financial business assistance may be obtained by various means subject to your business and/or personal circumstances.

Some of these financing methods are briefly described here:

CHATTEL MORTGAGE LOAN: This type of loan is granted when operating [redacted]ry, equipment, fixtures, delivery equipment, is used to [redacted]he terms of the loan.

PURCHASE AND LEASE-BACK OF EXISTING EQUIPMENT: This type of transaction is used when a scale of e[redacted]equipment is m[redacted]a lessor and leased back for a [redacted] of years. The [redacted] this method of obtaining additional capital allows substantial tax benefits as all lease payments are fully deductible from current income.

PURCHASE AND LEASE OF NEW EQUIPMENT: This method, while offering the tax advantage mentioned above, p[redacted] capital to be obtained for expansion or replacement [redacted] obs[redacted] or depreciated assets and offers a further advantage of not appearing as a liability on the balance sheet.

REAL ESTATE LOAN ON EXISTING EQUITY: A real estate loan may be obtained as a secondary [redacted] where a present mortgage or trust deed now ex[redacted]sts. [redacted] also possible to refinance existing real estate with the acquisition of a new and larger commitment.

REAL ESTATE LOAN FOR NEW CONSTRUCTION OR LAND DEVELOPMENT: When building for business or development of land is contemplated it is pos ble to get a loan commitment prior to construction or development by submission of plans and financial data.

FACTORING OF ACCOUNTS RECEIVABLE: Factoring is used to finance accounts receivable. Where accounts receivable exist, such accounts receivable can be sold for immediate cash to a factoring orga[redacted]

INVENTORY [redacted] Inventory may be used as collateral under certain conditions under which the control of the inventory is satisfactory to the lender.

LOANS SECURED BY PRIME SECUR[redacted]ORTGAGES, NOTES OR OTHER ACCEPTABLE COLLATER[redacted] can be pledged as [redacted]rity.

CAPITAL INVESTMENT: Capital financing by the sale of capital stock or a partnership interest is sometimes av[redacted]such arra[redacted]s are often made with a clause p[redacted] repurc[redacted]such capital interest under specified conditions.

DISCOUNTING OF CONDITIONAL SALES AGREEMENT: Sales of consumer products sold under the terms of a conditional sales agreement can be discounted with finance companies. Such discounting assures the immediate use of cash on consummated sales.

FINANCING BY THE USE OF FUNDS FROM LOCAL INVESTORS: Many individual investors seeking to employ capital profitably in their local city are willing to grant loans which are properly secured.

UNSECURED LOANS Unsecured loans are granted where the credit rating of the person or firm seeking loan funds is well established over a period of years.

Commercial and Business Affiliations:

SECURITY FIRST NATIONAL BANK
6358 Hollywood Blvd.
Los Angeles 28, California

MEMBER: CREDIT MANAGERS ASSOCIATION OF SOUTHERN CALIFORNIA
1501 West 8th Street, Los Angeles, California

MEMBER: LOS ANGELES CHAMBER OF COMMERCE
404 S. Bixel Street, Los Angeles, California

MEMBER: NATIONAL SMALL BUSINESS MEN'S ASSOCIATION, INC.
801 Nineteenth Street, N. W., Washington 6, D. C.

MEMBER: NATIONAL ASSOCIATION OF CREDIT MEN
229 4th Avenue, New York 3, N.Y.

ATTORNEYS: ANTONOW, WEISSBOURD AND GREENBERG
3540 Wilshire Boulevard, Los Angeles 5, California

Trade, financial and credit references are available upon request.

Correspondent Banks:

The Chemical Corn Exchange Bank
New York 15, N.Y.

The Citizens and Southern National Bank
Atlanta 8, Georgia

The American National Bank
Chicago 2, Illinois

The Denver National Bank
Denver 2, Colorado

The First National Bank in Dallas
Dallas 2, Texas

Lenders Service Corporation

785 PEACHTREE BLDG., SUITE 594
ATLANTA 8, GEORGIA

LETTER #1

Roger E. Barefield.
Magnolia Grocery
8th St., S.
Waynesboro, Georgia

REB. 54

[fol. 66]

IN UNITED STATES DISTRICT COURT

JUDGMENT AND OPINION ENTERED—March 4, 1961

The indictment in the above stated case consists of some forty odd pages containing forty-four counts charging defendants in 43 of the counts with violations of the mail fraud statute, 18 U.S.C.A., § 1341 and in Count Forty-Four with a conspiracy to violate such statute.

Paragraphs 1 through 7 and A through G of Count One charge in great detail an alleged scheme and artifice to defraud named persons which it is alleged defendants devised and intended to devise. Paragraph H of Count One alleges that on or about January 6, 1958, for the purpose of executing said scheme and artifice and attempting to do so that defendants did unlawfully, willfully and knowingly, cause to be placed in an authorized depository for mail matter an envelope and contents addressed to J. E. Claggett, Jr., 1006 N. W. 6th Avenue, Fort Lauderdale, Florida, to be sent and delivered by the Post Office Department of the United States in violation of § 1341, Title 18, U.S.C.A.

Paragraph 1 of Counts Two through Forty-Three reallege, by reference, all of the allegations of Count One except those contained in Paragraph H. Paragraph 2 of Counts Two through Forty-Three allege that defendants, on specified dates, placed in authorized depositories for mail matter "an envelope and contents" addressed to specified individuals or firms to be sent and delivered by the Post Office Department of the United States in violation of § 1341, Title 18, U.S.C.A. In Paragraph 2 of Counts Forty and Forty-One it is alleged that on specified dates, defendants, for the purpose of executing the scheme and artifice did willfully, unlawfully and knowingly cause to be placed in authorized depositories for mail, copies of a newspaper containing in the classified advertising section certain advertisements which are set [fol. 67] out verbatim, to be sent and delivered by the Post Office Department of the United States, in violation of § 1341, Title 18, U.S.C.A. The text of the advertise-

ment set out in Count Forty of the indictment is as follows:

"SALESMEN
THINKERS
IS WHAT WE WANT
MEN WHO CAN USE
GOD'S GIFT — THE
BRAIN — WITHOUT
GETTING IT RUPTURED

"To these men regardless of background, we offer a golden opportunity to from $15,000 to $30,000 a year on straight commission, work from qualified leads (not just names), interviewing businessmen on the problems of Small Business Finance. Must be over 30, have a car and be free to travel 7-state area. Home weekends. Phone Mr. Steele, TR. 2-0322."

The text of the advertisement set out in Count Forty-One is as follows:

"BOOK MEN
"OVER 30 YEARS OF AGE

"We have several ex-bookmen on our staff that are earning from $300 to $600 week on straight commission. Work from qualified confirmed leads (not just names), calling businessmen in 3-4 state area, home weekends, no night work, no cancellations. You keep all you earn. Phone Mr. J. N. Steele, TR. 2-0322."

The defendants have filed four motions to dismiss. In motion No. 1 defendants, separately and severally, move to dismiss the indictment on the ground that the indictment taken as a whole, and each and every count thereof taken separately, fail to charge an offense against the laws of the United States.

[fol. 68] In motion No. 2 defendants separately and severally move "to dismiss all but one of the first 43 counts in the indictment upon the ground that under 18 U.S.C.A., § 1341, only one crime is committed by use of

the mail to execute an alleged scheme to defraud by obtaining by false pretenses, no matter how many mailings were made to execute such alleged scheme."

In motion No. 3 defendants separately and severally move to dismiss all of the counts of the indictment, except one, on the ground that all of the counts are as a matter of law conspiracy counts and charge one and the same conspiracy.

In motion No. 4, defendants separately and severally move to dismiss the indictment and each and every count thereof on the ground that the indictment embraces a fatal misjoinder of offenses and defendants in that defendants, and each of them, are charged in the same indictment, and in the same counts thereof, with two, separate and distinct schemes and offenses carried on through separate and distinct corporate entities, perpetrated by separate and distinct individuals, who are alleged to have made different, separate and distinct representations, with separate and distinct objectives, etc. Defendants pray in this motion that the indictment be dismissed or that other appropriate relief be granted, either by granting a severance as to defendants not connected with Business Mart of America and Charles Ford & Associates, or by striking all references to these two corporations.

These four motions of defendants to dismiss are now properly before the Court for determination under Local Rule 15.

[fol. 69] In response to the motions to dismiss the United States opposes the motions on each and every ground thereof and contends:

1. That none of the motions set forth a lawful basis for dismissal of the indictment.
2. That the indictment correctly and properly alleges offenses against the laws of the United States and violations by defendants of §§ 371 and 1341 of Title 18, U.S.C.A.

Briefly, the scheme and artifice to defraud alleged, without setting out the particular part alleged to have been played therein by the defendants individually, is that defendants would contact, through certain of de-

fendants acting as salesmen, individuals or firms desiring to sell their business or of obtaining loans therefor, and would make to them numerous false and fraudulent pretenses, representations and promises relating to the ability and intention of defendants to sell or help sell a victim's business or to make, secure, or help to secure business loans for said victims; defendants' salesmen would, after inquiry from an owner of a business, visit such owner personally and induce them to enter into contracts purporting to be applications for the services of "Business Mart of America, Charles Ford and Associates, Inc., or Lenders Service Corporation," relating to the sale of the victim's business or building or to the obtaining of a loan for such business and would induce the owner to agree to pay and to pay a fee for such services; that after a salesman had obtained a check for the purported services and had left the place of business of a victim that he would immediately take such check to the bank upon which it was drawn and have it converted into a cashier's check; that when the applications for services [fol. 70] were transmitted with the check for the fee to the regional office of defendants, that it was a part of the scheme that defendants would accept all of the applications, deposit all of the fees in defendants' bank account, "without any study, appraisal or evaluation of said victim's eligibility for a loan from any source whatever"; that following such "acceptance" the defendants would mail to said victims a "signed copy of the accepted application, together with a form letter, for the purpose of lulling said victims by representing their applications had been accepted and that the defendants would therefore perform for said victims the valuable services which they had falsely and fraudulently represented they would perform; that the further purpose of such letter was to inform such victims that "they could not obtain a refund of their fees, and that the contract was not cancellable and that the said victim was bound thereby and had no recourse for retrieving his money." It is alleged that it was a "further part of the scheme and artifice to defraud that defendants would not perform the services orally represented by the salesmen and otherwise represented

by the defendants through their advertising and literature to said victims in that they would not sell the business of the victims, they would not procure buyers for the business of such victims, and they would not bring such buyers into contact with the victims," etc., and would not and did not obtain loans, or make or try to obtain loans for such victims.

It is further alleged that it was a part of the scheme alleged "that defendants would and did distribute, send and display through newspapers, magazines, direct mailings, and direct display by the salesmen numerous advertisements and promotional documents, all of which con- [fol. 71] tained numerous false and fraudulent statements, pretenses and representations which the defendants then and there well knew and intended to be false and fraudulent when made."

In a supplemental brief filed by respondent it is stated that the contents of the envelopes referred to in paragraph 2 of Counts 2, 7, 12, 16, 31, 33 and 38 was a brochure entitled "When Our Representative Calls" and that these brochures were mailed prior to any representative or salesman calling on the "victims." A copy of the brochure is attached to the brief. Respondent contends that the mailing of this brochure or pamphlet was "intended to further the scheme." This brochure sets out and discusses the various types of business loans and financing methods obtainable "subject to your business and/or personal circumstances," and it does not appear, nor does respondent contend, that any of these statements were false, its contention being that such brochures "contained outright false statements as to correspondent banks." Defendants contend that a fair reading of the pamphlet "is to give the named banks as references." No reference is contained in the indictment to correspondent banks, or that defendants made any false representations with reference to correspondent banks.

The purpose of Congress in enacting § 1341 was to prevent the Post Office from being used to carry out any scheme to defraud or to obtain money by false pretenses. This statute "does not purport to reach all frauds but *only those limited instances in which the use of the mails*

is a part of the execution of the fraud, leaving all other cases to be dealt with by appropriate state law." (italics supplied). *Kann* v. *United States*, 323 U.S. 88, 95. Thus only mailings which are "a part of the execution of the [fol. 72] fraud" or "*incident to an essential part of the scheme*" fall within the ban of the federal mail fraud statute. (italics supplied). *Parr* v. *United States*, 363 U.S. 370 at p. 391.

The Court is of the opinion that it can not hold as a matter of law that the mailings of the brochures referred to in Counts 2, 7, 12, 16, 31, 33 and 38, under the above holdings, were not "incident to or an essential part of the scheme" and that the same was not "a part of the execution of the fraudulent scheme alleged." This is also true of the mailings of the newspaper ads involved in Counts 40 and 41.

It appears that the mailings involved in the remaining counts of the indictment relate to transactions where money had already been obtained from the victims prior to such mailings. This subsequent use of the mails under the holdings in the *Parr* and *Kann* cases, supra, and the case of *Getchell* v. *United States*, 5 Cir., 282 F. 2d 681, were not for the purpose of "executing" the scheme.

Motion No. 1 to dismiss is as to Counts 2, 7, 12, 16, 31, 33, 38, 40 and 41, denied. The motion to dismiss as to the remaining counts of the indictment is sustained and such counts of the indictment are hereby dismissed.

There is no merit in motions to dismiss Nos. 2, 3 and 4 and the same are overruled and denied. See *Pinkerton* v. *United States*, 328 U.S. 640.

Defendants have also filed a motion for a Bill of Particulars. This motion will be stated and determined only as it relates to Counts 2, 7, 12, 16, 31, 33, 38, 40 and 41 to which the Court has overruled the motions to dismiss.

1.

As to paragraph 2 of Counts 2, 7, 12, 16, 31, 33 and [fol. 73] 38, defendants move that the respondent be required to state:

1. What the "contents" of the envelope were.

2. In what manner the same served to "execute" the alleged fraudulent scheme or device and particularly whether said contents served to "obtain money" from the addressee named, or whether such money had already been obtained.

2.

As to the allegation in Paragraph B of Count I (which are realleged in the other counts of the indictment) that defendants did:

> ". . . distribute, send and display through newspapers, magazines, direct mailings and display by the salesmen numerous advertisements and promotional documents, all of which contained numerous false and fraudulent statements, pretenses and representations which the defendants then and there well knew and intended to be false and fraudulent when made . . . ."

and the further allegation in paragraph G of Count I that defendants did:

> ". . . through the medium of the oral representations of the salesmen and the aforesaid literature and publications and advertising prepared and distributed by the defendants, make and intend to make numerous false and fraudulent pretenses, representations and promises, which were known and intended by defendants to be false and fraudulent when made . . . ."

the defendants move that respondent be required to state:

1. Whether any such "written matter" was deposited [fol. 74] in the mails in the Northern District of Georgia.
2. If so deposited, that the written matter so deposited be specifically identified.
3. What false and fraudulent statements or representations, if any, such written matter is alleged to have contained.

3.

That respondent be required to state the corporation (whether Charles Ford & Associates, Inc., Business Mart of America, or Lenders Service Corporation) on behalf of which the "envelope and contents" was mailed.

4.

That respondent be required to state whether any of defendants other than defendants Ruttenberg, Sampson and Miller had any connection with Charles Ford & Associates, Inc., or Business Mart of America, Inc.

5.

That respondent be required to state the approximate date each individual defendant was employed by Lenders Service Corporation and the approximate date each such defendant ceased to be employed by Lenders Service Corporation.

6.

That if respondent intends to use as a witness on the trial any alleged "victim" not specifically named as addresses in paragraph 2 of each count, that it be required to state:

1. The name and address of each such alleged "victim" and the name of the business in question.

[fol. 75]

2. The name of the defendant or defendants with whom he dealt.
3. Which of the three corporations involved such defendant claimed to represent.
4. When such "victim" discussed with any of defendants the sale of such business or the obtaining of a loan therefor.
5. If any defendant is charged with making a false statement or promise, the content thereof, whether it was oral or written, and in what particular the same was false.

What false statement, pretense or promise each defendant is alleged to have made, if any, to each of the "victims" specifically named as addresses of the "envelope and contents" referred to.

Respondent opposes the motion on the ground that it seeks matters which are not the proper subject of a bill of particulars.

In its supplemental brief, respondent has furnished the information as to what the contents of the envelopes were and states that such mailings were made prior to any salesman or representative calling on the "victims."

"The purpose of an indictment is to apprise the accused of the crime charged against him with such reasonable certainty as will enable him to make his defense and avail himself of his conviction or acquittal for protection against another prosecution for the same offense." *Johnson* v. *United States*, 5 Cir., 207 F. 2d 314, cert. den., 347 U.S. 938.

The indictment here follows generaly Form 3, Appendix [fol. 76] of Forms, Federal Rules of Criminal Procedure, 18 U.S.C.A. The elements of the offense covered by the mail fraud statute are (1) intention to defraud; and (2) execution of the intention by the use of the mail. These elements are clearly charged in the instant indictment.

The motion for a bill of particulars is overruled and denied.

This the 1st day of March, 1961.

BOYD SLOAN
United States District Judge

[fol. 77]

IN UNITED STATES DISTRICT COURT

Amendment to Order of Dismissal—April 3, 1961

The Court on March 1, 1961, having entered an order dismissing all counts of the above stated indictment, except Counts Nos. 2, 7, 12, 16, 31, 33, 38, 40 and 41, and the Court having in the same order overruled the defendants' motions for a bill of particulars;

It is further Ordered that the Court's aforesaid order of March 1, 1961, is hereby amended so as to provide that the defendants' motion for a bill of particulars is granted, insofar as the same requests descriptions of the contents of the mailings used as the basis for the counts of said indictment, and that the description of said mailings which was filed by the United States Attorney as a part of a supplemental brief, which description is referred to at pages Nos. 5 and 6 of the Court's order of March 1, does constitute such a bill of particulars and is so considered by the Court for the purposes of the Court's order of dismissal aforesaid.

The within order shall be effective *nunc pro tunc* as of March 1, 1961.

This the 3d day of April, 1961.

Boyd Sloan
United States District Judge

[fol. 78]

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed March 30, 1961

1. Name and address of Appellant:
United States of America
Northern District of Georgia
402 Old Post Office Building
Atlanta, Georgia

2. Name and address of Appellant's attorneys:
Charles D. Read, Jr., United States Attorney
John W. Stokes, Jr., Assistant United States Attorney
J. Robert Sparks, Assistant United States Attorney
Northern District of Georgia

3. Offense:

Use of the mails to defraud, in violation of Section 1341, Title 18, U.S.C.A.; conspiracy to use the mails to defraud, in violation of Section 371, Title 18, U.S.C.A.

4. Concise statement of judgment or order appealed from:

The order of the District Court dated March 1, 1961, sustaining the defendants' motion to dismiss the indictment and dismissing the said indictment as to all counts except Counts 2, 7, 12, 16, 31, 33, 38, 40, and 41.

5. All of the defendants in said case are free on bail.

The United States of America, the above named Appellant, hereby appeals to the United States Court of

[fol. 79] Appeals for the Fifth Circuit from the above stated judgment.

Dated: March 30, 1961

CHARLES D. READ, JR.
United States Attorney

JOHN W. STOKES, JR.
Assistant United States Attorney

J. ROBERT SPARKS
Assistant United States Attorney

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[fols. 80-83] • • • •

[fol. 84] Clerk's Certificate to foregoing transcript omitted in printing

[fols. 85-139] • • • •

[fol. 140] IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18900

UNITED STATES OF AMERICA, APPELLANT

versus

RALPH L. SAMPSON, ET AL., APPELLEES

Appeal from the United States District Court for the Northern District of Georgia

OPINION—January 18, 1962

Before TUTTLE, Chief Judge, and CAMERON and BROWN, Circuit Judges.

CAMERON, Circuit Judge: This appeal was taken by the United States of America from a judgment of the district court dismissing, for failure to state an offense, th. y-five counts of a forty-four count indictment against twenty-three individual defendants and one corporate defendant. The indictment was based upon 18 U. S. C. § 1341, charging that appellees had used the mails to defraud. Besides a motion to dismiss the appeal on the ground that the judgment appealed from was not a final judgment, the [fol. 141] appellees filed an alternative motion challenging the jurisdiction of this Court and praying that we certify the appeal to the Supreme Court of the United States on the contention that exclusive jurisdiction of the appeal was lodged in the Supreme Court. We think that this motion is well taken and that the Supreme Court does have exclusive jurisdiction to determine the appeal and, accordingly, we certify the appeal to that Court.

This action is taken pursuant to the terms of 18 U. S. C. § 3731, which provides in part:

> "An appeal may be taken by and on behalf of the United States from the district courts direct to the

Supreme Court of the United States in all criminal cases in the following instances:

> "From a decision or judgment setting aside, or dismissing any indictment . . . or any count thereof, where such decision or judgment is based upon the . . . construction of the statute upon which the indictment . . . is founded . . .
>
> "If an appeal shall be taken pursuant to this section to any court of appeals, which, in the opinion of such court, should have been taken directly to the Supreme Court of the United States, such court shall certify the case to the Supreme Court of the United States, which shall thereupon have jurisdiction to hear and determine the case to the same extent as if an appeal had been taken directly to that Court."

[fol. 142] Decision of this point turns upon the determination of whether the court below dismissed any count of the indictment based upon its "construction" of the Mail Fraud Statute, supra. We think that it did. The following language is taken from the judgment of the district court:

> "The purpose of Congress in enacting § 1341 was to prevent the Post Office from being used to carry out any scheme to defraud or to obtain money by false pretenses . . . Thus only mailings which are 'a part of the execution of the fraud' or 'incident to an essential part of the scheme' fall within the ban of the federal mail fraud statute . . .
>
> "It appears that the mailings involved in the remaining counts of the indictment relate to transactions where money had already been obtained from the victims prior to such mailings. This subsequent use of the mails . . . were not for the purpose of 'executing' the scheme."

It seems clear that every word of the quoted language was used in the "construction" of the Mail Fraud Statute. The district court was declaring what the statute meant in its provision "for the purpose of executing such scheme or artifice . . ." It was holding that using the mail in con-

nection with transactions where the money had already been obtained from the victims did not constitute an "executing" of the scheme. It had to determine from other cases and from its own construction of the statute itself whether the mailings charged in the several counts of the indictment amounted, under the law, to an "execution" of the scheme described in the indictment. As to [fol. 143] the facts set forth in nine counts of the indictment, it held that the actions charged therein did constitute an execution of the scheme. As to the thirty-five counts here involved, it held that the actions set forth in the respective counts did not constitute an "execution" of the scheme.

The district court had to determine the meaning of the Act, particularly of the word "execution," and to assay the language of the several counts to determine whether the actions charged did constitute execution of the scheme under its construction of the meaning of the words used in the statutes. The decision reached by it was clearly "based upon the . . . construction of the statute upon which the indictment . . . is founded."

In their briefs on the merits, the parties differed sharply on whether mailings made after money had already been obtained from the victims did constitute execution of the scheme within the meaning of the Mail Fraud Statute. Construction of the meaning of the statute was a *sine qua non* of a decision by the district court. That being true, the Supreme Court of the United States has exclusive jurisdiction of the appeal.[1]

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[1] Movants quote at length from the brief of the United States on the merits in an effort to show that the brief admits that the court below construed the Mail Fraud Statute, notwithstanding that it used the word "misconception" instead of the word "misconstruction." Here is a part of the Government's brief which movants quote:

"In so ruling, the Court has adopted the position that even though a fraud scheme encompasses dealings with numerous victims and continues for a number of years, relying, as it must, for success, upon the pacifying and lulling of past victims as well as the finding of new ones, that once a victim has parted with his money no further mailing by the fraud operators to him can possibly be a part of the *execution of the fraud. This ruling is based upon a misconception of the law of mail fraud.*" [Emphasis added.]

[fol. 144] Aside from any admission by the United States that the district court was here engaged in construction of the statute, we think that the Supreme Court cases relied upon by the movants amply sustain that view. *United States* v. *Borden Company*, 308 U. S. 188; *United States* v. *Mersky*, 361 U. S. 431, 434; *United States* v. *Hvass*, 355 U. S. 570; *United States* v. *Turley*, 352 U. S. 407; *United States* v. *Southeastern Underwriters Association*, 322 U. S. 533; *United States* v. *Halseth*, 342 U. S. 277; *United States* v. *Hood*, 343 U. S. 148; *United States* v. *Bramblett*, 348 U. S. 503; *United States* v. *Howard*, 352 U. S. 212; *United States* v. *International Union*, 352 U. S. 567.

In the recent case of *United States* v. *Mersky*, supra, the Supreme Court dealt at some length with the addition to the statute of the right invoked by the movants here and used these words (361 U. S. p. 434) in defining the duty which we conceive is laid upon us here:

> ". . . The Criminal Appeals Act specifies several conditions, any one of which permits a direct appeal by the Government to this Court, and makes our jurisdiction in such cases exclusive. In the event that an appeal which should have been taken here is erroneously effected to a Court of Appeals, that court is directed to certify it here."

We hold, accordingly, that the appeal was erroneously effected to this Court and it is ordered that it be and it is certified to the Supreme Court of the United States.

[fol. 145] IN
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1961

No. 18,900

D. C. Docket No. 22385 Crim.

UNITED STATES OF AMERICA, APPELLANT

versus

RALPH L. SAMPSON, ET AL., APPELLEES

Appeal from the United States District Court for the Northern District of Georgia

Before TUTTLE, Chief Judge, and CAMERON and BROWN, Circuit Judges.

JUDGMENT—January 18, 1962

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the appeal in the cause be, and it is hereby certified to the Supreme Court of the United States in accordance with the opinion of this Court.

Issued: January 18, 1962

[fol. 146] Clerk's Certificate to foregoing transcript omitted in printing

[fol. 147]

SUPREME COURT OF THE UNITED STATES

No. 735, October Term, 1961

UNITED STATES, APPELLANT

vs.

RALPH L. SAMPSON, ET AL.

ORDER NOTING PROBABLE JURISDICTION—April 2, 1962

APPEAL from the United States District Court for the Northern District of Georgia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1962 638862 1319